LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 1 1961
JAMES R. BROWNING, Clerk

No. 289

In the Supreme Court of the United States

OCTOBER TERM, 1961

PUBLIC SERVICE TELEVISION, INC., PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL COMMUNICATIONS COMMISSION IN OPPOSITION

ARCHIBALD COX,
Solicitor General,

LEE LOEVINGER,
Assistant Attorney General,

RICHARD A. SOLOMON,
Attorney,

Department of Justice,
Washington 25, D. C.

MAX PAGLIN,
General Counsel,

DANIEL R. OHLBAUM,
Assistant General Counsel,

RUTH V. REEL,
Counsel,

Federal Communications Commission
Washington 25, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement	3
Argument	11
Conclusion	17

CITATIONS

Cases:

Federal Communications Commission v. *Broadcasting Service Organization*, 337 U.S. 901, reversing *per curiam*, 171 F. 2d 1007	16
Federal Communications Commission v. *WOKO, Inc.*, 329 U.S. 223	11, 14, 16
Ford Motor Co. v. *National Labor Relations Board*, 305 U.S. 364	16
Hazel-Atlas Co. v. *Hartford Co.*, 322 U.S. 238	10, 11, 14
Mansfield Journal Co. v. *Federal Communications Commission*, 180 F. 2d 28	14
Mester v. *United States*, 70 F. Supp. 118, affirmed 332 U.S. 749	14, 16
Morgan v. *United States*, 298 U.S. 468	14
Morgan v. *United States*, 304 U.S. 1	14
National Broadcasting Co. v. *United States*, 319 U.S. 190	14
National Labor Relations Board v. *Pittsburgh Steamship Co.*, 340 U.S. 498	15
Ohio Bell Telephone Co. v. *Public Utilities Commission*, 301 U.S. 292	14
Root Refining Co. v. *Universal Oil Products Co.*, 169 F. 2d 514, certiorari denied, 335 U.S. 912	10, 11
Sangamon Valley Television Corp., 19 Pike & Fischer, Radio Regulation 1055	15
Sangamon Valley Television Corp. v. *United States*, 269 F. 2d 221	15

Cases—Continued Page

WHDH, Inc., 29 F.C.C. 204, rehearing denied, 29 F.C.C. 986, affirmed *sub. nom. Massachusetts Bay Telecasters, Inc.* v. *Federal Communications Commission* case No. 13,896, order of January 19, 1961, certiorari denied *sub nom. WHDH, Inc.* v. *Federal Communications Commission*, 366 U.S. 918 14
WKAT, Inc., 22 F.C.C. 117 4
WORZ, Inc. v. *Federal Communications Commission*, 358 U.S. 55 11

Statutes:

Communications Act of 1934, 48 Stat. 1064, as amended, 47 U.S.C. 151, *et seq.*:
Section 312, 47 U.S.C. 312 15
Section 402(b), 47 U.S.C. 402(b) 4
Section 409(c)(2), 47 U.S.C. 409(c)(2) 3, 11, 12, 13, 14
Judicial Review Act of 1950, 5 U.S.C. 1031, *et seq.* 9

Miscellaneous:

Hearings on Independent Regulatory Agencies Legislation, before the House Committee on Interstate and Foreign Commerce, 86th Cong., 2d Sess., pp. 73-86 14-15

In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 289

PUBLIC SERVICE TELEVISION, INC., PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL COMMUNICATIONS COMMISSION IN OPPOSITION

OPINIONS BELOW

The order of the court below remanding the cases to the Federal Communications Commission for further hearing is reported at 258 F. 2d 418. The court's opinion (Pet. App. 1a-8a), approving the Commission's proposed decision and order after the remand, has not yet been officially reported. The original decision of the Commission is reported at 22 F.C.C. 117, and its opinion and order denying rehearing at

23 F.C.C. 390. The Commission's decision and order upon the remand are reported at 29 F.C.C. 216 and 221, and its opinion and order denying rehearing at 29 F.C.C. 983.

JURISDICTION

The order of the court of appeals remanding the cases to the Commission was entered on April 17, 1958. The judgment of the court (Pet. App. 8a-9a) approving the Commission's proposed decision and order on remand was entered on July 6, 1961. The petition for a writ of certiorari was filed on August 5, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and section 402(j) of the Communications Act, 47 U.S.C. 402(j).

QUESTIONS PRESENTED

The Federal Communications Commission, in a comparative licensing proceeding among several mutually exclusive applicants for television facilities in Miami, Florida, found that the petitioner, one of the applicants, had procured the services of a long-time friend of one of the Commissioners to speak to him, *ex parte*, in an attempt to influence him to vote in petitioner's behalf. The Commission concluded that such activities demonstrated that the petitioner lacked the essential qualifications to be a broadcast licensee and disqualified it from further consideration for the license. The questions presented are:

1. Whether the Commission could properly apply to its adjudicatory licensing proceedings the principle

that a privilege should be denied to one who seeks its award by improper off-the-record influence, in the absence of a finding that the party violated the prohibitions of section 409(c)(2) of the Communications Act against *ex parte* presentation of additional material by persons who have participated in the preparation or presentation of the case for hearing.

2. Whether the Commission's action constituted a revocation of petitioner's construction permit without compliance with the procedural requirements of section 312 of the Communications Act.

3. Whether the Commission could disqualify petitioner on these grounds, without considering its other qualifications to be a licensee of a television station.

4. Whether the Commission's factual determination that petitioner had engaged in disqualifying conduct was arbitrary or discriminatory, in the light of its treatment of a similar charge with respect to another applicant for the facilities.

STATUTE INVOLVED

Pertinent sections of the Communications Act of 1934 (48 Stat. 1064, as amended, 47 U.S.C. 151, *et seq.*) are set out in the petition (pp. 4-6).

STATEMENT

On February 7, 1957, after a comparative hearing among four applicants for a new television station on Channel 10 in Miami, Florida, the Commission granted the application of petitioner Public Service Television, Inc. (Public Service), and denied the com-

peting applications of WKAT, Inc. (WKAT), North Dade Video, Inc. (North Dade), and L. B. Wilson, Inc. (Wilson). *WKAT, Inc.*, 22 F.C.C. 117 (excerpted at J. App. 37). Rehearing was denied on September 11, 1957 (23 F.C.C. 390). Appeals to the court below, in which petitioner Public Service was an intervenor, were taken by WKAT and Eastern Airlines, Inc.,[1] under section 402(b) of the Communications Act, 47 U.S.C. 402 (b).

On March 13, 1958, pending argument on the merits of the appeals, the Commission filed a motion for a remand to permit it to reconsider the grant in the light of charges which had been made, after the filing of the appeals, by witnesses before the Special Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce. These charges were that one of the Commissioners who participated in the administrative proceeding should have disqualified himself and that one or more of the applicants had engaged in improper conduct in attempting to secure an award from the Commission. In support of this motion, the Commission lodged with the court a transcript of the Congressional investigatory proceedings.

By order entered April 17, 1958, after argument by the parties, the court of appeals remanded the cases

---

[1] Eastern Airlines, Inc., a competitor of Public Service's parent corporation, National Airlines, Inc., had opposed the grant to petitioner before the Commission. WKAT, Inc., also appealed from a subsequent ruling of the Commission modifying the petitioner's construction permit. All of the appeals were consolidated below.

to the Commission with instructions to hold an evidentiary hearing upon the charges of improprieties, and to consider the possibility that the award to petitioner Public Service might be void *ab initio* or voidable, and that one or more of the applicants might be disqualified to receive an award of a television permit by reason of misconduct (J. App. 80). The court ordered the Commission to make findings of fact on at least the following issues (J. App. 81):

> what circumstances formed the basis for the public charges that one of the members of the Commission should have disqualified himself in these proceedings; and
>
> whether any person or persons influenced or attempted to influence any member of the Commission in respect to the present proceedings in any manner whatsoever except by the recognized and public processes of adjudication (see *Root Refining Co.* v. *Universal Oil Products Co.*, 3 Cir., 1948, 169 F. 2d 514, 534-5, 540-1), and, if so, the full facts and circumstances; and
>
> whether any party to the proceeding before the Commission directly or indirectly secured, aided, confirmed, ratified, or knew of any misconduct found by the Commission to have occurred.

The court further ordered the Commission to report its findings and recommend appropriate disposition of the appeals, over which it retained jurisdiction.[2]

---

[2] The court's order also provided that all original parties to the administrative proceeding be allowed to participate in the hearing and that the Department of Justice be permitted to participate as *amicus curiae*.

Pursuant to the court's order, the Commission reopened the record for further hearings before a specially appointed hearing examiner, Judge Horace E. Stern, retired Chief Justice of the Supreme Court of Pennsylvania (J. App. 83). The examiner issued an initial decision on December 1, 1958 (see Supp. J. App.,[3] 29 F.C.C. 221). He found that Public Service and WKAT, through their own officials or through emissaries whose conduct they secured and ratified, had "attempted improperly, by private interviews and otherwise and not by the recognized and public processes of adjudication, to influence Commissioner Mack with respect to the proceedings * * * in order to induce him to favor and vote for" them. (29 F.C.C. at 238.) He also found (29 F.C.C. at 239) that North Dade employed Robert F. Jones for the purpose of enlisting "the aid of Senators and Congressmen in obtaining for it the award of the construction permit for channel 10, Miami—a method which would have been improper for that purpose", but that there was no evidence that Jones had actually done anything improper.

In the case of petitioner Public Service, the examiner found that it had procured Thurman Whiteside, who was known to be a close friend of Commissioner Mack, to approach Mack off the record to urge him to vote for Public Service (29 F.C.C. at 225-227, 238, 239). The examiner further found that Mack, who

---

[3] The decisions of the examiner and the Commission upon the remand are contained in a Supplemental Joint Appendix, consisting of the Commission's official slip opinions.

ultimately voted for Public Service, had been rendered wholly unable to participate, and to vote with freedom and impartiality, in part because Whiteside was "one, who from time to time through many years, had made and was continuing to make loans to him of considerable sums of money and also substantial gifts, some of them after Mack had become a member of the Federal Communications Commission and while the decision in the Channel 10, Miami, case was pending" (29 F.C.C. at 239). The use of Whiteside, a "very powerful" intermediary (29 F.C.C. at 225), was characterized by the examiner as "grossly improper" (29 F.C.C. at 227). He stated (29 F.C.C. at 227):

> The record had been officially closed and the case was under consideration by the Commission. If the representations were not of facts or matters properly for consideration by the Commission, they should not have been presented to Mack. If, on the other hand, they would have been proper evidence in the case, they should have been presented publicly to the entire Commission and not privately to one of its members and without the presence or knowledge of the other parties in interest. Certainly in adversary proceedings, as distinguished from the exercise of merely administrative functions, Commissioners of such a Federal agency as this are to all intents and purposes quasi-judges, and accordingly should be bound by the same legal, ethical, and professional rules as those by which judges are governed: [cases omitted] * * *.

The examiner concluded that the grant to Public Service was voidable and should be set aside because

of Mack's participation (29 F.C.C. at 239). He further concluded that the misconduct of the various applicants was not absolutely disqualifying but reflected upon them adversely from a comparative standpoint (29 F.C.C. at 239-240).

Following exceptions and oral argument, the Commission issued its Decision and Order of July 14, 1960, essentially adopting the examiner's findings,[4] but rejecting his conclusion that the misconduct of the three applicants should not be considered disqualifying (see Supp. J. App., 29 F.C.C. 216). The Commission stated (29 F.C.C. at 218):

> The Commission, after careful evaluation of the facts, is of the opinion that the misconduct of WKAT, Inc., North Dade Video, Inc., and Public Service Television, Inc., reflects so adversely upon their character as to demonstrate that they lack the qualifications to operate the station sought in this application. None of them was satisfied to be judged upon the record made in open hearing through the processes of adjudication specified by statute and grounded upon the principles of judicial fairplay; each of them sought to influence the results by factors unrelated to the merits of the case and not a part of the hearing record. Willingness to pervert the process of administrative adjudication is convincing proof that the requisite character qualifications are lacking. Their misconduct is " * * * of such moment as * * * logically and rationally

---

[4] Among the changes made in the examiner's findings, the Commission made certain new findings on North Dade (29 F.C.C. at 217).

> to give rise to the conclusion that the public interest, convenience, and necessity would not be served were * * * " the applications in question, or any of them, granted. [Footnote citations omitted.]

The Commission also determined that the record on remand disclosed nothing adverse to the qualifications of the sole remaining applicant, Wilson, which had previously been found to be qualified, and that it would serve the public interest to grant Wilson's application. However, because of the default nature of the award, Wilson's initial license period upon completion of construction was limited to four months instead of the customary three years (29 F.C.C. at 218). The Commission's order set aside the original grant to Public Service, denied the applications of Public Service, WKAT, and North Dade, and granted the application of Wilson (29 F.C.C. at 218).

The Commission transmitted its decision on remand to the court of appeals, together with the record developed in the remand proceedings. After the filing of briefs and oral argument, the court, treating the Commission's opinion as a recommendation for approval by the court,[2] approved the Commission's find-

---

[2] The court considered its previous remand order as directing the Commission, after further hearing, to formulate the orders it deemed appropriate, and to recommend their adoption to the court, in accordance with the procedure expressly established by 5 U.S.C. 1037(c) for handling remands to the Commission in review proceedings coming within the Judicial Review Act of 1950, 5 U.S.C. 1031, *et seq.* Accordingly, it remanded the case to the Commission "for entry of the order it now proposes" (Pet. 8a). The court expressly stated how-

ings and conclusions and remanded the cases to the Commission for entry of the orders proposed in the Commission's decision of July 14, 1960 (Pet. App. 1a-8a.) Stating that the doctrine of *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U.S. 238, and *Root Refining Co.* v. *Universal Oil Products Co.*, 169 F. 2d 514, 541 (C. A. 3), certiorari denied, 335 U.S. 912, "applies to the adjudicatory functions of an administrative agency" (Pet. App. 6a), the court held that the Commission had properly disqualified Public Service for "corrupt tampering with the adjudicatory process itself", (Pet. App. 6a, 8a). The court stated (Pet. App. 6a):

> This doctrine [that one who seeks to control a judge or jury by personal influence is fortunate if he loses no more than the rights he seeks to obtain] applies to the adjudicatory functions of an administrative agency. This is not a mere technicality. Surreptitious efforts to influence an official charged with the duty of deciding contested issues upon an open record in accord with basic principles of our jurisprudence, eat at the very heart of our system of government—due process, fair play, open proceedings, unbiased, uninfluenced decision. He who engages in such efforts in a contest before an administrative agency is fortunate if he loses no more than the matter involved in that proceeding.

---

ever that "[i]f we were to treat the order of the Commission now before us (dated July 14, 1960) as a final order before us on appeal of North Dade Video [which had appealed in case no. 16089 from the July 14, 1960 order of the Commission] we would affirm it" (*ibid.*).

ARGUMENT

In sustaining the authority of the Commission to set aside the grant and to disqualify petitioner because of its use of improper influence, the court of appeals correctly applied well-settled law. It has been established for many years that *ex parte* presentations by a party vitiate an administrative proceeding which is required by statute, as this one was, to be made upon the record of an evidentiary hearing. *Morgan* v. *United States*, 298 U.S. 468, 480; *Morgan* v. *United States*, 304 U.S. 1, 19-20; *Ohio Bell Telephone Co.* v. *Public Utilities Commission*, 301 U.S. 292, 304. It is equally clear that an attempt to secure an award in such a proceeding through *ex parte* influence, rather than by a presentation of the merits of the case in the public processes of adjudication, is sufficient ground for denying the award. *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U.S. 238; *Root Refining Co.* v. *Universal Oil Products Co.*, 169 F. 2d 514 (C. A. 3), certiorari denied, 335 U.S. 912. The application of this principle to the grant of a television license in the public interest—where character is an essential element, *Federal Communications Commission* v. *WOKO, Inc.*, 329 U.S. 223, 228-229—raises no substantial question warranting review by this Court. See *WORZ, Inc.* v. *Federal Communications Commission*, 358 U.S. 55.

1. Petitioner (Pet. 10-11) charges that the Commission's order is vitiated by its failure to find a violation of section 409(c)(2) of the Communications Act, 47 U.S.C. 409(c)(2). This section pro-

hibits any "person who has participated in the presentation or preparation for presentation" of a case before the Commission from "directly or indirectly mak[ing] any additional presentation respecting such case, unless upon notice and opportunity for all parties to participate." But in view of the fact that the examiner, the Commission, and the court below all found that petitioner's misconduct constituted improper "influence" which struck "at the very heart of the integrity of the judicial process" (29 F.C.C. at 227; 29 F.C.C. at 218, Pet. App. 6a),[6] the Commission could properly determine that the case should be decided on this broader basis and that the question of non-compliance with section 409(c)(2) need not be specifically decided.[7]

---

[6] Petitioner's statement (Pet. 10, n. 3) that its activities involve at most the *ex parte* presentation of material which could have been presented on the merits, rather than an attempt at influence, is squarely contradicted by the record and the findings. As the examiner found (29 F.C.C. at 231-232), the reason why Public Service procured Whiteside as its off-the-record emissary to former Commissioner Mack was because of the knowledge of the personal friendship between the two men.

[7] That this was the Commission's determination is clear. North Dade's proposed conclusion No. 5 before the examiner was that George T. Baker and Paul R. Scott, officials of petitioner, had directly or indirectly procured or ratified the misconduct, and had thus violated section 409(c)(2) (R. 9015-9016). The examiner, without further explanation, affirmed this conclusion, except as to the alleged violation of section 409(c)(2) (J. App. 110). North Dade took exception to this ruling on the alleged violation of section 409(c)(2). (Exception No. 5, R. 9111). The Commission denied the exception on the ground that it was "Moot in view of the Commission's decision herein" (29 F.C.C. at 220).

Petitioner erroneously assumes (Pet. 10-11) that the specific prohibition of section 409(c)(2) sets a limit upon the Commission's power to deal with misconduct affecting the administrative process. An attempt to "influence" an agency "by factors unrelated to the merits of the case" (29 F.C.C. at 218) is not immunized because no statute prohibits it in terms, or because an existing statute, not relied upon by the Commission, could also have been made the basis of decision.[8] The Commission and the court of appeals properly held that decision here could rest on the violation of a universally recognized standard of right conduct, rather than merely on a finding that a presentation concerning the case had been made without notice and an opportunity for all parties to participate.[9] The gross misconduct of which peti-

---

[8] The findings of the examiner which were adopted by the Commission, and the Commission's stated reasons for disqualifying petitioner, were broad enough to include noncompliance with section 409(c)(2). The examiner found petitioner (acting in part through Baker and Scott, who were witnesses at the earlier public hearing) responsible for the *ex parte* presentations made on its behalf (29 F.C.C. at 238-239), and the Commission stated (29 F.C.C. at 218), "None of them [the disqualified applicants] was satisfied to be judged upon the record made in open hearing through the processes of adjudication specified by statute and grounded upon the principles of judicial fairplay; each of them sought to influence the results by factors unrelated to the merits of the case and not a part of the hearing record."

[9] A letter from a witness for an applicant to the Commission, urging the applicant's fitness, would violate section 409(c)(2) if sent during a hearing and without notice to other parties, but would not, in the absence of other circumstances,

tioner was correctly found guilty clearly warranted the conclusion that it was unfit, under the public interest standard, to receive the award it sought to obtain, whether or not a violation of some specific provision of law was also found. *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U.S. 238; *National Broadcasting Co.* v. *United States*, 319 U.S. 190, 223; *Federal Communications Commission* v. *WOKO, Inc.*, 329 U.S. 223; *Mansfield Journal Co.* v. *Federal Communications Commission*, 180 F. 2d 28, 32-33 (C.A. D.C.); *Mester* v. *United States*, 70 F. Supp. 118, 121-122 (E.D.N.Y.), affirmed 332 U.S. 749. There is no conflict between the decision below and the Communications Act.[10]

---

constitute the same sort of misconduct revealed by this record. A violation of section 409(c)(2), not involving an attempt to "influence" the decision "by factors unrelated to the merits of the case", might well be held to require a new proceeding but not absolutely to disqualify the responsible party. See *WHDH, Inc.*, 29 F.C.C. 204, rehearing denied, 29 F.C.C. 986, affirmed, *sub nom., Massachusetts Bay Telecasters, Inc.* v. *Federal Communications Commission* case No. 13,896, order of January 19, 1961 (C.A.D.C.), certiorari denied *sub nom. WHDH, Inc.* v. *Federal Communications Commission*, 366 U.S. 918.

[10] Petitioner's reliance (Pet. 10) upon Congressional consideration of proposals to broaden section 409(c)(2) is misplaced. Such proposals went to the difficult and different problem of preventing off-the-record advice from persons having no connection with a proceeding before the Commission. Thus, then-Chairman Ford, in his testimony before the House Committee on Interstate and Foreign Commerce quoted by petitioner (Pet. 10, n. 4), made clear that, so far as adjudicatory proceedings are concerned, the "loophole" in section 409(c)(2) is that it does not reach persons not within the Commission's jurisdiction. Hearings on Independ-

2. Petitioner's other points do not present any substantial issue. It asserts (Pet. 11-12), without supporting details, that applicant Wilson was guilty of similar misconduct, but that the Commission failed to treat Wilson as it treated petitioner. The short answer is that the examiner, the Commission, and the court below all agreed, upon careful review of the record, that Wilson did not engage in any improper conduct and was qualified to receive a grant. The resolution of this factual issue raises no question for further review. *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 340 U.S. 498, 502-503.

Petitioner's contention (Pet. 12-13) that the revocation procedures of section 312 of the Communications Act, 47 U.S.C. 312 (Pet. 4), should have been followed, rests on the unsupportable assumption that the initial award to petitioner had become final and non-reviewable, although it was pending on appeal.

---

ent Regulatory Agencies Legislation, 86th Cong., 2d Sess., pp. 73-86. Misconduct of a party to an adjudicatory hearing was not the subject of the discussion.

The suggestion (Pet. 14) that at the time there was a prevailing view that *ex parte* approaches were proper is not correct. *Ex parte* approaches by parties in adjudicatory proceedings (to say nothing of attempts to exert influence by factors unrelated to the merits of the case) have never been condoned. It is true that, prior to the decision in *Sangamon Valley Television Corp.* v. *United States*, 269 F. 2d 221 (C.A.D.C.), there was a widespread belief that *ex parte* presentations (but not efforts to exert improper influence) were permissible in *rule making proceedings*. See *Sangamon Valley Television Corp.*, 19 Pike & Fischer, Radio Regulation 1055, at 1056d. But this has no effect on petitioner's case which was an adjudicatory proceeding.

The 1958 remand order of the court below (*supra*, pp. 4-5) was consonant with the "familiar appellate practice to remand causes for further proceedings without deciding the merits, where justice demands that course in order that some defect in the record may be supplied" or "to the end that valid and essential findings may be made," *Ford Motor Co.* v. *National Labor Relations Board*, 305 U.S. 364, 373, 374. Accordingly, petitioner's grant never became final but instead was properly withdrawn in the course of the appellate proceedings.

Finally, petitioner's point (Pet. 13-14) that the Commission could not disqualify it on the basis of its misconduct without weighing its other qualifications to be a licensee is directly contrary to well-settled law. *Federal Communications Commission* v. *WOKO, Inc.*, 329 U.S. 223, 228-229; *Federal Communications Commission* v. *Broadcasting Service Organization*, 337 U.S. 901, reversing *per curiam* 171 F. 2d 1007 (C.A.D.C.); *Mester* v. *United States*, 70 F. Supp. 118 (E.D.N.Y.), affirmed, 332 U.S. 749. The court of appeals correctly held (Pet App. 6a) that the Commission had discretion to conclude that "[n]o * * * capacity for service is paramount to the public interest in the integrity of the adjudicatory processes of government * * *."

CONCLUSION

The decision below is in accord with established principles and presents no substantial question warranting further review by this Court. The petition for a writ of certiorari should be denied.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

LEE LOEVINGER,
Assistant Attorney General.

RICHARD A. SOLOMON,
Attorney.

MAX D. PAGLIN,
General Counsel,

DANIEL R. OHLBAUM,
Assistant General Counsel.

RUTH V. REEL,
Counsel,

Federal Communications Commission.

SEPTEMBER, 1961

☆ U. S. GOVERNMENT PRINTING OFFICE: 1961 606346 252